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6 Attorneys for Defendant
CBS STUDIOS INC.

8 UNITED STATES DISTRICT COURT
9 CENTRAL DISTRICT OF CALIFORNIA

10
11 DELRAY RICHARDSON p/k/a DELRAY
d/b/a DEL FUNK BOY MUSIC, an
12 individual, and STERLING A.
SYNDER d/b/a/ ZION RECORDS,
13 an individual,

14 Plaintiffs,

15 vs.

16 CBS STUDIOS INC., d/b/a CBS
TELEVISION DISTRIBUTION, a division
17 of CBS CORPORATION, a Delaware
corporation,

18 Defendants.

Case No. CV12-7925 ABC (SHx)
Honorable Audrey B. Collins

OBJECTIONS TO AND MOTION TO
STRIKE PORTIONS OF THE
DECLARATION OF DELRAY
RICHARDSON OPPOSING MOTION
FOR SUMMARY JUDGMENT

Date: September 30, 2013
Time: 10:00 a.m.
Ct rm: 680
Roybal Building

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21 Defendant CBS STUDIOS INC. ("CBS") makes the following
22 objections and moves to strike the following portions of the
23 Declaration of Delray Richardson in Support of Opposition to
24 Defendant's Motion for Summary Judgment:

1 Richardson's testimony is for the most part not admissible
2 and for an even greater part, not even relevant. Each specific
3 objection is set forth below.

4 Paragraph C 2 and Exhibit 1.

5 Irrelevant; FRE 403. Except that it one more time shows
6 that Richardson and Jeeve worked as equal co-writers.

7 Paragraph C 3 and Exhibit 2.

8 Irrelevant; FRE 403: The fact that Richardson previously
9 sued Jean-Yves Ducornet ("Jeeve") in small claims court has no
10 possible relevance to claims for copyright infringement.

11 Inadmissible Compromise Offers and Negotiations; FRE
12 408(a)(1) and (2):

13 Richardson may not use evidence of settlement proceedings
14 either to prove or disprove the validity of a disputed claim.

15 Not Authenticated; FRE 901

16 If documents are to be authenticated through personal
17 knowledge to support a summary judgment motion, the proponent of
18 the documents must attach them "to an affidavit that meets the
19 requirements of FRCP 56(e) and the affiant must be a person
20 through whom the exhibits could be admitted into evidence."

21 *Canada v. Blain's Helicopters, Inc.*, 831 F.2d 920, 925 (9th Cir.
22 1987); see also *Orr v. Bank of America, NT & SA*, 285 F.3d 764,
23 775, 774, n. 8 (9th Cir. 2002) ("A document can be authenticated
24 under rule 901(b)(1) by a witness who wrote it, signed it, used
25 it, or saw others do so.") (quoting 31 Wright & Gold, *Federal*

1 *Practice & Procedure: Evidence* § 7106, 43 (2000)).

2 A proper foundation also may be established through means
3 other than personal knowledge, including any of the means
4 included in FRE 901 or permitted as self-authenticating by FRE
5 902 if the proper certification is affixed to the document. See
6 FRE 902.

7 Richardson nowhere explains what his exhibits actually are,
8 let alone authenticate them. He simply inserts a number
9 referring to one of his attached exhibits. Richardson fails to
10 state that the exhibits are "true and correct copies" of what
11 they purport to be - nor does he explain why several of the
12 exhibits are obviously incomplete.

13 Paragraph C. 4

14 Irrelevant; FRE 403

15 Inadmissible hearsay; FRE 801(c)

16 Paragraphs C. 5 and 6; Exhibit 3 and 4

17 The entirety of Paragraphs 5 and 6 are inadmissible hearsay,
18 FRE 801(c). Whatever Jeeve said out of court, since it is
19 offered to prove the truth of what Jeeve believed, is
20 inadmissible "opinion within hearsay." It is therefore
21 prohibited by FRE 701.

22 In addition, the attached copies of alleged emails from
23 Jeeve to Richardson are not authenticated (Exhibits 3 and 4). FRE
24 901.

1 Paragraph C. 7

2 Inadmissible opinion testimony; FRE 701

3 Contains impermissible legal assertions and conclusions

4 Paragraphs C. 8 and 9

5 Inadmissible opinion testimony; FRE 701

6 Irrelevant; FRE 403

7 Contains legal conclusions

8 Paragraph 10

9 Irrelevant; FRE 403

10 Inadmissible hearsay; FRE 801(c)

11 Paragraphs 11 through 14 and Exhibits 6 through 11

12 The entireties of all paragraphs and exhibits referred to
13 therein consist of inadmissible hearsay; FRE 403

14 Exhibits 6 through 11 are also not authenticated; FRE 901

15 Paragraph 15

16 First two sentences are inadmissible, immaterial and
17 irrelevant hearsay; FRE 801(c) and 403. Third sentence is
18 conclusory, unsupported and inadmissible opinion; FRE 701.

19 Paragraphs 16 through 19 and Exhibits 12 through 15

20 The entireties of all paragraphs and exhibits referred to
21 therein consist of inadmissible hearsay; FRE 403

22 Exhibits 12 through 15 are also not authenticated; FRE 901

23 Paragraph 20

24 Inadmissible hearsay; FRE 801(c)

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1 Paragraph 21

2 Exhibit 16 is incomplete (FRE 106), obviously missing many
3 pages, and there is no explanation contained anywhere in
4 Richardson's Declaration for the exclusion of pages from a
5 document he claims he got from opposing counsel.

6 Paragraphs 22 through 25 and Exhibit 17

7 Each paragraph consists almost entirely of inadmissible
8 hearsay, FRE 801(c).

9 Specifically, Paragraph 22 refers to a "letter dated
10 August 16, 2012 the Defendant counsel stated in a correspondence
11 with the plaintiffs that 'Love You So': 'This instrumental was
12 not used in episodes 105 and 109 as Mr. Richardson is claiming.'"
13 No copy of any such letter is attached.

14 Paragraph 24 refers to a cue sheet from Episode 1410
15 allegedly provided by Defendant "in discovery." There is no cue
16 sheet for Episode 1401 attached.

17 Paragraph 25 refers to a cue sheet from Episode 807 and
18 1307. Neither is attached. Exhibit 17 is an unauthenticated
19 copy of what purports to be a "Mechanical License Agreement"
20 between Plaintiffs Richardson and Snyder, which is irrelevant to
21 the issues. FRE 403.

22 Paragraphs 26 through 28

23 Again, the statements made in these paragraphs are not only
24 confusing, but represent nothing that could create an issue of
25 material fact such as to defeat a motion for summary judgment.

1 30115 at *7 and *13 (ND Ill. 2013).

2 In truth, Plaintiffs never took any depositions. Besser
3 Decl., ¶ 10. Perhaps Plaintiffs, because of their in pro per
4 status, somehow do not understand the difference between
5 depositions and answers to interrogatories. Either way,
6 Plaintiffs cannot just claim they have "evidence . . . that later
7 turned out to be either misleading . . . or false" and leave it
8 at that.

9 Paragraphs 46 through 47

10 Exhibit 20 (first mentioned in Paragraph 46) which seems to
11 be offered to show that Richardson and Jeeve would never license
12 one of their works without the other knowing, is insufficient to
13 show even that. It is irrelevant, unauthenticated and contains
14 inadmissible hearsay. FRE 403, 901, 801(c).

15 The rest of the statements in Paragraph 47 lack foundation,
16 are unauthenticated and constitute inadmissible hearsay. FRE
17 801(c).

18 Paragraph 48

19 This testimony is contradictory to Mr. Richardson's
20 deposition testimony. He said he did not have a duplicate of the
21 original CD he deposited with the Copyright Offices, but had
22 created one when asked for the original in discovery. Deposition
23 of Delray Richardson, pp. 20-21.

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1 Paragraph 49

2 To whatever fact this is intended to pertain, stating that "
3 Mr. Ducornet lied in his Declaration In Mr. Ducornet's
4 email he wrote . . ." is unauthenticated inadmissible hearsay.

5 Respectfully submitted,
6 Dated: September 16, 2013

7 LAW OFFICES OF ROBERT S. BESSER

8 By: /s/ Robert S. Besser
9 ROBERT S. BESSER
10 Attorneys for Defendant
11 CBS STUDIOS INC.
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CERTIFICATE OF SERVICE

STATE OF CALIFORNIA:

COUNTY OF LOS ANGELES:

I am a member of the Bar of the State of California. I am over the age of 18 and not a party to the within action. My business address is 1221 Second Street, Suite 300, Santa Monica, California 90401.

On this date, I served the foregoing document described as OBJECTIONS AND MOTION TO STRIKE PORTIONS OF DECLARATION OF DELRAY RICHARDSON on all interested parties in this action by:

[XX] BY MAIL: placing a true and correct copy thereof enclosed in a sealed envelope with postage fully pre-paid and addressed as follows:

Delray Richardson, In Pro Per
Sterling A. Snyder, In Pro Per
2191 East 21st Street Box K
Signal Hill, CA 90755

I am aware that on motion of the party served, service is presumed invalid if the postal cancellation date or postage meter date is more than one day after the date of deposit stated in this affidavit.

I declare under penalty of perjury under the laws of the United States that the foregoing is true and correct. Executed on September 16, 2013, at San Rafael, California.

/s/ Christopher Chapin
CHRISTOPHER CHAPIN